

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DERRICK WHEATT, et al.,) CASE NOs.: 1:17-CV-0377
) and 1:17-CV-0611
Plaintiffs,)
) JUDGE JAMES S. GWIN
v.)
CITY OF EAST CLEVELAND, et al.,) MAGISTRATE JUDGE WILLIAM H
) BAUGHMAN, JR.,
Defendants.)
)

**CITY DEFENDANTS' MOTION FOR LEAVE
TO FILE A SUR-REPLY IN OPPOSITION TO PLAINTIFFS'
JOINT MOTION FOR SANCTIONS AGAINST THE CITY DEFENDANTS**

The City Defendants respectfully seek leave of this Court to file a short Sur-Reply in Opposition to Plaintiffs' Joint Motion for Sanctions (Dkt. Nos. 103 and 114) against them for purportedly not producing a 30(b)(6) witnesses able to testify as to questions primarily relating to a "public records" request.

Plaintiffs admit that three such witnesses have been offered to them. However, there are extenuating circumstances that prevented their appearance that were beyond the City's control. However, the gravamen of this situation is that there is, indeed, no 1998 "public records" request relating to the Clifton Hudson homicide file. City Defendants thus seek the opportunity to address this new factual dispute in its proposed Sur-Reply.

Therefore, City Defendants respectfully seek leave to file the Sur-Reply that is attached hereto as Exhibit A.

Respectfully submitted,

/s/ Willa M. Hemmons

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EXHIBIT A

**CITY DEFENDANTS' SUR-REPLY IN OPPOSITION TO PLAINTIFFS' JOINT
MOTION FOR SANCTIONS AGAINST THE EAST CLEVELAND DEFENDANTS**

The City Defendants submit this Sur-Reply in Opposition to Plaintiffs' Eugene Johnson, Derrick Wheatt and Laurese Glover (the East Cleveland Three's) Joint Motion for Sanctions.

Although Plaintiffs' allege the City is not in compliance with Court Orders regarding same, they, on the contrary, admit that the City Defendants have proffered three 30(b)(6) witnesses: the then Mayor Emanuel Onunwor, the City's then Detective Bureau supervisor, Sgt. Det. Patricia Lane; and, then Law Director, Helen Forbes Fields.

Plaintiffs unilaterally rejected former Mayor Emanuel Onunwor. After almost twenty years, Sgt. Det. Patricia Lane was involuntarily unavailable. After a unilateral discussion to which City Defense Counsel was not privy, Plaintiffs' Counsel excused Law Director Helen Forbes Fields, after which Plaintiffs' Counsel unfairly faulted the City.

It is not the City's fault that its proffered 30(b)(6) witnesses did not materialize and it could not prepare them. As to each of the above personages, the City could have reasonably

expected them to have knowledge as to any public records requests sent to the City in June, 1998.

This brings us to the dispositive point that, indeed, there was ***no public records request*** for the Clifton Hudson homicide file sent to the City of East Cleveland in June of 1998.

As has been repeatedly presented, in an Affidavit, (Exhibit A), Emanuel Onunwor stated that he had received a public records request regarding “**one**” of the “East Cleveland Three.” Cross referencing that Affidavit to a letter sent by Attorney Michael Troy Watson, June 9, 1998, it is noted that Atty. Watson writes that he is sending his letter on behalf of “**one**” of the “East Cleveland Three.”

It is unequivocal then that, in his Affidavit, Mayor Onunwor is referring to Atty. Watson’s June 9, 1998 letter as a “public records” request. Even the most cursory examination of Atty. Watson’s letter (Exhibit B) reveals that it is clearly not a valid public records request. In his letter, Atty. Watson only intimates that at some undetermined time, *in the future* he would make arrangements to examine the Hudson homicide investigation file.

Hence, not only has there not been any evidence produced thus far of a 1998 “public records” request on the topic of a Hudson homicide file, but there is thus no such document upon which a 30(b)(6) witness can be examined in a Deposition or elsewhere.

The Court’s Orders (Dkt. Nos.: 62 and 75) relating to a 30(b)(6) witness production was based upon the unfounded premise that a 1998 Clifton Hudson public records request existed. Since no such animal existed, it was a mission impossible for the City to fulfill. This eventuality obviates the need even to rely upon *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (Ohio 1994). Although, it should be noted that the 2013 request made by The Innocence Project apparently was a valid public records request so that would provide some

insight into why it was provided—particularly after the “East Cleveland Three” cases had survived seven appeals. If numerous attorneys and judges over twenty years, who had access as well to all the materials, felt that the “East Cleveland Three” had obtained justice, then it is not unsurprising that seven hard working law enforcement officers would feel that they had protected the East Cleveland community, performed their work honorably; and, followed the U.S. Constitution. See also, *Ashcroft v. Iqbal*, 556 U.S. 662, (decided by the U.S. Supreme Court, June 19, 2017.)

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and accurate copy of *City Defendants' Motion for Leave to File A Sur-Reply in Opposition to Plaintiffs' Joint Motion for sanctions and City Defendants Sur-Reply in Opposition to Plaintiffs' Joint Motion for Sanctions Against The East Cleveland Defendants* was electronically filed with the Court on this 23rd day of October, 2017; and that by operation of this Court's electronic notification system a copy thereof is made available to all registered parties. In addition, a courtesy copy of this filing has been served by email to Howard S. Rabb, Esq., bankruptcy counsel for Defendant Michael Perry, at: hrabb@dworkenlaw.com.

/s/ Willa M. Hemmons
Attorney for City Defendants